



UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

In re  WILLIAM JOSEPH URSO and BARBARA MARGARET URSO,  Debtors.	Case No. 2:12-bk-13391-RK  Chapter 7  Adv. No. 2:12-ap-01683-RK
TODD ANTKIEWICZ,  Plaintiff,  vs.  WILLIAM JOSEPH URSO and BARBARA MARGARET URSO,  Defendants.	MEMORANDUM DECISION ON ADVERSARY COMPLAINT OBJECTING TO DISCHARGE  DATE: November 14 and 15, 2013 TIME: 9:00 a.m. CTRM: 1675

On May 11, 2012, plaintiff Todd Antkiewicz ("Plaintiff") initiated this adversary proceeding by filing his complaint seeking denial of the discharge of debtors William Joseph Urso and Barbara Margaret Urso (collectively, "Defendants") alleging five separate claims for relief under Section 727(a) of the Bankruptcy Code, 11 U.S.C. A two-day trial was conducted in this adversary proceeding before the undersigned United States Bankruptcy Judge on November 14 and 15, 2013. Kirk Brennan of the California

1 Law Office, P.C., appeared for Plaintiff. Albert L. Chaney, III, Attorney at Law, appeared  
2 for Defendants.

3  
4 **Procedural History**

5 Defendants filed a voluntary petition for relief under Chapter 7 of the Bankruptcy  
6 Code on January 31, 2012. A Chapter 7 bankruptcy discharge has not been entered in  
7 this bankruptcy case due to the pendency of this adversary proceeding. Plaintiff filed his  
8 original complaint objecting to Defendants' discharge on May 11, 2012, and filed an  
9 amended complaint on January 10, 2013 with leave of the court. *Creditor Todd*  
10 *Antkiewicz First Amended Complaint to Deny the Debtors' Discharge* ("Complaint"), filed  
11 January 10, 2013; *Order Granting Motion for Leave to File First Amended Complaint*,  
12 entered January 9, 2013. The Clerk of Court entered Defendants' default on March 11,  
13 2013, but on motion of Defendants, the entry of default was subsequently set aside by  
14 order of the court on June 11, 2013. *Notice that Clerk Has Entered Default against*  
15 *Defendants*, filed on March 11, 2013; *Order Granting Defendants' Motion to Set Aside*  
16 *Entry of Default Pursuant to Fed. R. Civ. P. 55(c) and 60(b)*, entered on June 11, 2013.  
17 Defendants then filed and served an answer to the first amended complaint. *Answer of*  
18 *Debtors William Joseph Urso and Barbara Urso to First Amended Complaint of Creditor*  
19 *Todd Antkiewicz*, filed on June 12, 2013.

20 The parties entered into a joint pre-trial stipulation and filed it on the docket on  
21 September 23, 2013. *Joint Pretrial Stipulation* ("Pretrial Stipulation"), filed September 23,  
22 2013. The court conducted a pretrial conference on October 1, 2013, and orally  
23 approved the Joint Pretrial Stipulation. To the extent that the Joint Pretrial Stipulation has  
24 not been formally approved, it is now approved formally.

25 The trial in this adversary proceeding was held on November 14 and 15, 2013.  
26 When the trial concluded, the court set a schedule for the parties to submit proposed  
27 findings of fact and conclusions of law. Plaintiff lodged proposed findings of fact and  
28 conclusions of law on December 20, 2013. *Notice of Lodgment of Order or Judgment in*

1 *Adversary Proceeding Re: Plaintiff's Proposed Findings of Fact and Conclusions of Law*  
2 (*"Plaintiff's Proposed Findings"*), filed on December 20, 2013. Defendants lodged their  
3 proposed findings of fact and conclusions of law on January 21, 2014. No objections  
4 were interposed to either side's proposed findings and conclusions, and the court took  
5 the matter under submission on January 31, 2014.

6 Having considered the evidence admitted at trial and the oral and written  
7 arguments of the parties, the court now issues this memorandum decision and renders  
8 the following findings of facts based on the facts determined on the evidence admitted at  
9 trial and conclusions of law.

### 10 **FACTS**

11 The primary dispute between the parties which underpins many of Plaintiff's claims  
12 in this adversary proceeding is whether, as alleged by Plaintiff, Defendants owned an  
13 interest in their son's business, Urso Air Systems, and transferred and concealed such  
14 interest along with income they received from this business. *Plaintiff's Proposed Findings*  
15 at 2:14-3:12. Based on the evidence presented at trial, the court finds that Defendants  
16 did not own any interest in their son's business, Urso Air Systems, and finds that the  
17 business was owned by their son, not them. The court finds that while Defendants may  
18 have provided assistance to their son in helping him run his business, the evidence is  
19 insufficient to show by a preponderance of the evidence that Defendants were  
20 compensated for their assistance to the business or that they had an ownership interest  
21 in the business.

22 According to Defendants' son, William Anthony Urso, who testified at trial, Urso Air  
23 Systems was and is a sole proprietorship business owned by him, which he started in  
24 2006. *Trial Declaration of William Anthony Urso* at ¶¶ 2-3. According to the son, the  
25 father, Defendant William Joseph Urso, provided advice to him, but never received any  
26 financial benefit or compensation from the business. *Id.* at ¶¶ 3-4. It was understood  
27 between father and son that the business belonged to the son. *Id.* Also, William Anthony  
28 Urso has filed tax returns for Urso Air Systems as a sole proprietorship since 2006 and

1 has never filed partnership tax returns for this business. *William Anthony Urso Trial*  
2 *Testimony*, November 14, 2013 at 2:14 p.m. The court finds this evidence that the  
3 business, Urso Air Systems, was owned by the son as a sole proprietorship, and not with  
4 the father, Defendant William Joseph Urso, as a partnership, to be credible.

5 Plaintiff urges the court to find that the father, Defendant William Joseph Urso,  
6 owned a 20% interest in Urso Air Systems and that the son, William Anthony Urso, did  
7 not begin to operate this business separate from his father until May 11, 2011. *Plaintiff's*  
8 *Proposed Findings* at 2:14-3:12. This contention is primarily based on evidence relating  
9 to two contractor's licenses issued to Urso Air Systems. *Id.* The Application for Original  
10 Contractor's License – Examination Waiver filed with the Contractor's State License  
11 Board on April 3, 2006 (the "Original License Application") lists William Joseph Urso as  
12 the "Qualifying Partner" holding a 20% interest in Urso Air Systems. *Plaintiff's Exhibit 27,*  
13 *Urso Air Systems Application for Original Contractor's License.* A second contractor's  
14 license was issued to Urso Air Systems on May 25, 2011, reflecting sole ownership in the  
15 son. *Plaintiff's Exhibit 45, Contractor's License Detail, Urso Air Systems.* Looking solely  
16 to these documents, it might appear that the father, Defendant William Joseph Urso,  
17 owned an interest in Urso Air Systems and disposed of it several months prior to the filing  
18 of his bankruptcy case in January 2012.

19 However, the son, William Anthony Urso, testified at trial and explained that the  
20 change in ownership of Urso Air Systems from a partnership to a sole proprietorship was  
21 in form only. *Trial Declaration of William Anthony Urso* at ¶ 5. The son testified that  
22 there was never really a partnership between him and his father. *William Anthony Urso*  
23 *Trial Testimony*, November 14, 2013 at 1:53 p.m. The son acknowledged using his  
24 father as the "Qualifying Partner" on his Original License Application, but attributed this to  
25 laziness, convenience, and a desire to avoid taking a "law" examination to obtain his own  
26 contractor's license by using his father's contractor's license. *Id.* at 1:53-1:54 p.m.;  
27 *Plaintiff's Exhibit 27.* His father, Defendant William Joseph Urso, agreed to sign the  
28 application as a favor to his son, letting him use his contractor's license, and William

1 Anthony Urso was really the 100% owner of the business at all times. *William Anthony*  
2 *Urso Trial Testimony* November 14, 2013 at 1:57 p.m. Having heard the testimony of  
3 both Urso father and son and observing their demeanors at trial, the court finds their  
4 testimony that the son was lazy in not taking the “law” examination for his own  
5 contractor’s license, and that the father was enabling his son to evade this licensing  
6 requirement, to be very credible and reflects the actual reality of their relationship in Urso  
7 Air Systems, the son’s business, that the father was merely helping the son in the latter’s  
8 business, even to the extent of “lending” the former’s contractor’s license, rather than  
9 having an ownership interest in the business.

10 According to the son, the original contractor’s license for Urso Air Systems was  
11 revoked six months after it was issued because the son, William Anthony Urso, had not  
12 taken the “law” test and a change in the law meant that his father’s signature on the  
13 Original License Application was no longer sufficient to exempt him from the examination.  
14 *Id.* at 1:58 p.m. The son, William Anthony Urso, then took the test and was re-issued the  
15 same license for Urso Air Systems. *Id.* at 1:59 p.m. The son asked the person who was  
16 helping him with the Urso Air Systems license paperwork why the re-issued license still  
17 reflected a partnership, but the son was told that it was easier that way, and the son  
18 ultimately decided he did not want to pay for a new license to make the change. *Id.*

19 The son, William Anthony Urso also testified that his license for Urso Air Systems  
20 was expiring in 2011 and he could either renew the license or get a new license issued  
21 as a sole proprietorship, which he should have done once he took the “law” test himself.  
22 *Id.* at 2:01 p.m. The court finds the son’s explanation to be credible and consistent with  
23 the other evidence presented at trial showing that he was the sole owner of Urso Air  
24 Systems and not with his father as a partnership. The court finds the son’s testimony to  
25 be credible that he was essentially not honest with the state contractor’s licensing board  
26 on his Original License Application for Urso Air Systems by using his father’s license in  
27 order to avoid additional expense, delay, and effort needed to obtain a license in his own  
28

1 name rather than that he was attempting to hide an ownership interest of his parents in  
2 his business from his father's creditors.

3 At trial, in response to questions by Plaintiff's counsel, William Anthony Urso also  
4 adequately explained comments on Urso Air System's "Angie's List" profile that might  
5 suggest involvement of his father in the business. Urso Air Systems has a profile on the  
6 website "Angie's List" that describes it as being in business since 1982. *Plaintiff's Exhibit*  
7 *30, Angie's List Profile for Urso Air Systems*. The son, William Anthony Urso, testified  
8 and explained that the reference to 1982 was to the year that he was born as an attempt  
9 to gain credibility with older clients. *William Anthony Urso Trial Testimony*, November 14,  
10 2013 at 2:03 p.m. The son also characterized this as sort of an "inside joke" because he  
11 was a sole proprietor and he himself was "established" in 1982. *Id.* The son further  
12 testified that this this was not a reference to his father's involvement in the business  
13 because the family was living in Hawaii in 1982 and there was no Urso Air Systems  
14 business until 2006. *Id.* at 2:04 p.m. There is no evidence before the court indicating  
15 that Urso Air Systems operated anywhere other than California or operated prior to 2006,  
16 and the court finds the son's testimony to be credible in this respect and consistent with  
17 his other testimony at trial.

18 Plaintiff also urges the court to find that Barbara Urso was an employee of Urso Air  
19 Systems and that Defendants concealed her income from the business. *Plaintiff's*  
20 *Proposed Findings* at 4:13-5:20. William Antkiewicz, Plaintiff's father, testified that he  
21 observed Barbara Urso at the front desk of Urso Air Systems and opening up the shop.  
22 *Trial Declaration of William Antkiewicz* at ¶¶ 26-31. William Antkiewicz also testified that  
23 he observed Defendant William Joseph Urso interacting with customers in the showroom  
24 of Urso Air Systems. *Id.* at ¶ 32.

25 The son, William Anthony Urso, testified that, including himself, Urso Air Systems  
26 had only three employees in 2011. *William Anthony Urso Trial Testimony*, November 14,  
27 2013 at 1:44 p.m. The son named two others as employees, including his brother, but  
28 not Defendants, his parents. *Id.* The son further testified that neither of his parents was

1 or is employed by Urso Air Systems and that they did not and do not perform business-  
2 related services for the business. *Trial Declaration of William Anthony Urso* at ¶ 6.  
3 Defendant Barbara Urso testified that she was not an employee of Urso Air Systems, but  
4 that she would go to the business to answer the phone when her son was not there, or  
5 help out by scrubbing the floor, because he was her child. § 341(a) *Meeting Recording*  
6 *Played during Trial*, November 14, 2013 at 9:44 a.m.; *Barbara Urso Trial Testimony*,  
7 November 14, 2013 at 11:17 a.m. Mrs. Urso had testified at her deposition that she  
8 would answer phones, set up appointments, and clean at Urso Air Systems while also  
9 trying to establish her own staffing services business. *Plaintiff's Exhibit 25* at 38:13-40:8.  
10 The son, William Anthony Urso, testified that he has never paid his parents for any work  
11 that they performed for Urso Air Systems. *William Anthony Urso Trial Testimony*,  
12 November 14, 2013 at 2:14 p.m.

13 Plaintiff offered evidence of cash and check payments by Urso Air Systems to  
14 Barbara Urso to show that she was compensated by the business, but this evidence at  
15 trial by itself does not establish that these payments were wages earned by her. The  
16 son, William Anthony Urso, testified that Urso Air Systems made the payments to  
17 Barbara Urso to reimburse her for helping him purchase furniture, equipment, and  
18 supplies for his business. *William Anthony Urso Trial Testimony*, November 14, 2013 at  
19 1:45 p.m. The son had been operating the company out of his house in Long Beach, but  
20 purchased another property in San Pedro in September 2011. *Id.* It took two to three  
21 months for the son to prepare this property to open for business, and Urso Air Systems  
22 moved into it at the end of December, or in January, which then took a few months to set  
23 up and settle in. *Id.* The son's Long Beach house was sold in September 2011, and Mr.  
24 Urso moved the business into his parents' house during this interim period. *Id.* This  
25 explanation is consistent with the other evidence because all the payments from Urso Air  
26 Systems to Barbara Urso were made between the limited time period of October 2011  
27 and February 2012. *William Anthony Urso Trial Testimony*, November 14, 2013 at 1:45  
28 p.m.; *Plaintiff's Exhibit 31, Cancelled Checks Payable to Barbara Urso*. The court finds

1 the son's testimony explaining the payments to his mother to be plausible and credible.  
2 The evidence before the court establishes that Defendants were involved in their son's  
3 business and assisted him in running it for free, but they did not receive any  
4 compensation for those services and were not his employees at any point in time. The  
5 court finds that Plaintiff has not proven by a preponderance of the evidence that Barbara  
6 Urso was compensated for any services she provided to her son's business.

7 Finally, Plaintiff contends that Defendants made false oaths by omitting the  
8 following from their schedules and Statement of Financial Affairs: (1) personal and  
9 business bank accounts; (2) jewelry; (3) sports and hobby supplies; (4) a state court  
10 judgment of \$50,000; (5) a burial plot valued at \$8,000; (6) accounts receivable; (7) a  
11 2001 Chevrolet Silverado 1500; (8) two businesses – American Builder's Inc. and William  
12 Urso and Associates; and (9) debtor William Joseph Urso's contracting income.

13 *Plaintiff's Proposed Findings* at 10:27-11:24. Defendants filed their bankruptcy petition  
14 and schedules on January 31, 2012. *See Case No. 2:12-bk-13391-RK, Petition*, at  
15 Docket Entry No. 1. On April 17, 2012, Defendants filed amended schedules, including  
16 an amended Schedule B. *Plaintiff's Exhibit 8, Amended Schedule B*. The amended  
17 Schedule B differed from Defendants' original Schedule B in that it disclosed an  
18 additional asset – a judgment in the amount of \$50,000 but valued at \$0 because it was  
19 considered uncollectible. *Plaintiff's Exhibits 1 and 8, Schedule B to Petition, and*  
20 *Amended Schedule B*. Plaintiffs also made subsequent amendments to their schedules  
21 and Statement of Financial Affairs that impact these claimed omissions. For ease of  
22 reading, the factual findings of the court as to these alleged omissions are discussed  
23 individually under the third claim for relief below.

#### 24 **ANALYSIS**

##### 25 **A. 11 U.S.C. § 727(a)(2)(A)**

26 Plaintiff's first claim for relief alleges that Defendants' bankruptcy discharge should  
27 be denied pursuant to 11 U.S.C. § 727(a)(2)(A) because they concealed assets from the  
28 trustee and creditors. *Complaint* at 2:19-4:2, ¶¶ 9-11. A debtor may be denied a



1 discharge under 11 U.S.C. § 727(a)(2) if it is established that “the debtor, with intent to  
2 hinder, delay or defraud a creditor . . . has transferred, removed, destroyed, mutilated, or  
3 concealed . . . (A) property of the debtor, within one year before the date of the filing of  
4 the petition.” 11 U.S.C. § 727(a)(2). Plaintiff, as the party objecting to Defendants  
5 discharge, bears the burden of proving by a preponderance of the evidence that  
6 Defendants: (1) made a disposition of property, such as a transfer or concealment, and  
7 (2) the disposition was made with the subjective intent to hinder, delay, or defraud a  
8 creditor through the act of disposing of the property. *Lawson v. Hughes (In re Lawson)*,  
9 122 F.3d 1237, 1240 (9th Cir. 1997); *see also, In re Beauchamp*, 236 B.R. 727, 730` (9<sup>th</sup>  
10 Cir. BAP 1999).

11 Plaintiff specifically contends that Defendants’ discharge should be denied  
12 pursuant to 11 U.S.C. § 727(a)(2)(A) because they transferred debtor William Joseph  
13 Urso’s interest in Urso Air Systems to their son, William Anthony Urso, as of May 25,  
14 2011, for no compensation. *Plaintiff’s Proposed Findings* 8:5-12. As discussed in detail  
15 above, the court finds from the evidence presented at trial that William Joseph Urso did  
16 not own any interest in Urso Air Systems. Section 727(a)(2)(A) requires a disposition of  
17 “property of the debtor” within one year prior to the petition, and this claim fails because  
18 as discussed above, there was no such interest in Urso Air Systems that could have  
19 been transferred.

20 The court finds that Plaintiff has not met his burden of proof in showing by a  
21 preponderance of the evidence that Defendants disposed of their property within one  
22 year prior to their bankruptcy petition date with the intent to hinder, delay, or defraud  
23 creditors. Therefore, the court denies Plaintiff’s claim for relief seeking to deny  
24 Defendants’ discharge pursuant to 11 U.S.C. § 727(a)(2)(A).<sup>1</sup>

25  
26 <sup>1</sup> In the first amended complaint, Plaintiff also alleged in support of his claim under 11 U.S.C. §  
27 727(a)(2)(A) that Defendants concealed assets by failing to list them in their bankruptcy schedules,  
28 including two bank accounts, business accounts receivable, jewelry, business interests and vehicles.  
Complaint at 2:19-4:2. None of these allegations are addressed in Plaintiff’s Proposed Findings of Fact  
and Conclusions of Law, and because they were not addressed there, the court deems these other

**B. 11 U.S.C. § 727(a)(2)(B)**

Plaintiff's second claim for relief alleges that Defendants' discharge should be denied under 11 U.S.C. § 727(a)(2)(B) because they concealed assets through false testimony at their 11 U.S.C § 341(a) meeting of creditors. *Complaint* at 4:6-5:25, ¶¶ 13-14. Section 727(a)(2)(B) of the Bankruptcy Code applies the same standards as Section 727(a)(2)(A), but to property of the bankruptcy estate transferred or concealed after the filing of the bankruptcy petition. 11 U.S.C. § 727(a)(2)(A) and (B); *see also*, 6 Resnick and Sommer, *Collier on Bankruptcy*, ¶ 727.02 at 727-13 – 727-27 (16<sup>th</sup> ed. 2014) (discussing the legal standard for 11 U.S.C. § 727(a)(2) and drawing no substantive distinction between § 727(a)(2)(A) and (B). The statutory language is the same regarding disposition of prepetition assets of the bankruptcy debtor, which would be property of the bankruptcy estate under 11 U.S.C. § 541, but for the alleged “disposition” (i.e., assets of the debtor prepetition and assets of the bankruptcy estate postpetition), except for the different time periods between § 727(a)(2)(A) (“within one year before the date of the filing of the petition” and § 727(a)(2)(B) (“after the date of the filing of the petition”). A debtor may be denied a discharge under 11 U.S.C. § 727(a)(2)(B) if it is established that “the debtor, with intent to hinder, delay or defraud a creditor . . . has transferred, removed, destroyed, mutilated, or concealed . . . (B) property of the estate, after the date of the filing of the petition.” *Id.* As previously discussed regarding § 727(a)(2)(A), Plaintiff, as the party objecting to Defendants' discharge, bears the burden of proving his claim under § 727(a)(3)(B) by a preponderance of the evidence that Defendants (1) made a disposition of property, such as a transfer or concealment, and (2) the disposition was made with the subjective intent to hinder, delay, or defraud a creditor through the act of disposing of the property. *See Lawson v. Hughes (In re Lawson)*, 122 F.3d at 1240.

---

allegations as abandoned (except as to the alleged interest in Urso Air Systems discussed herein). Moreover, any claim under 11 U.S.C. § 727(a)(2)(A) based on these allegations should be denied because Plaintiff did not allege, let alone, prove by a preponderance of the evidence that there was any disposition of these other assets during the required time period under 11 U.S.C. § 727(a)(2)(A). *In re Lawson*, 122 F.3d at 1241.

1 Plaintiff specifically contends that Defendants concealed property of the  
2 bankruptcy estate after filing their bankruptcy petition by failing to disclose (1) accounts  
3 receivable of approximately \$8,000; and (2) Defendant William Joseph Urso's 20%  
4 interest in Urso Air Systems. *Plaintiff's Proposed Findings* at 8:19-9:24. Plaintiff  
5 contends that these assets were non-exempt and were discovered only through his  
6 actions in this adversary proceeding. *Id.* For the reasons already stated above, the court  
7 finds that Plaintiff cannot prevail on his claims under § 727(a)(2)(B) in regard to William  
8 Joseph Urso's alleged interest in Urso Air Systems because he had no such ownership  
9 interest to conceal. Therefore, only the accounts receivable remain to be discussed.

10 1. Concealment of Property of the Estate

11 Defendant William Joseph Urso testified at trial and his deposition that he was  
12 owed \$8,000 as a finder's fee in December 2011 by Ech Construction, a subcontractor  
13 that he referred work to, which was paid over January, February and March 2012.  
14 *Transcript of Deposition of William Joseph Urso, October 25, 2012, Plaintiff's Exhibit 26,*  
15 *at 14:2-24; William Joseph Urso Trial Testimony, November 14, 2013 at 11:29-11:33 a.m.*  
16 According to Mr. Urso, the finder's, or referral, fee was contingent on a construction job  
17 being commenced. *William Joseph Urso Trial Testimony, November 14, 2013 at 11:30*  
18 *a.m.* Defendant William Joseph Urso admitted that the finder's fee was earned in  
19 December of 2011. *Transcript of Deposition of William Joseph Urso, October 25, 2012,*  
20 *Plaintiff's Exhibit 26 at 14:23-24.* According to Defendant William Joseph Urso, the  
21 finder's fee of \$8,000 was paid in installments between January 2012 through March  
22 2012 and deposited into the bank account of William Urso and William Urso and  
23 Associates ending in number 0880. *Transcript of Deposition of William Joseph Urso,*  
24 *October 25, 2012, Plaintiff's Exhibit 26 at 14:2-15:7; William Joseph Urso Trial*  
25 *Testimony, November 14, 2013 at 11:30 a.m.*

26 Defendants filed their bankruptcy petition and schedules on January 31, 2012.  
27 *See Petition, Case No. 2:12-bk-13391-RK* at Docket Entry No. 1. Defendants did not list  
28 the amount of the finder's fee that remained to be paid on their original Schedule B.

1 *Plaintiff's Exhibit 1, Schedule B to Petition*. In order for Defendants to have concealed  
2 the finder's fee as accounts receivable, they must have been aware that it needed to be  
3 disclosed. Concealment has been defined as:

4 1. The act of refraining from disclosure; esp., an act by which one prevents or  
5 hinders the discovery of something. 2. The act of removing from sight or notice;  
hiding. . . .

6 *Black's Law Dictionary* at 327 (9<sup>th</sup> ed. 2009). It follows that in order to prevent discovery  
7 of something or hide it, the actor must know that it should be disclosed or someone is  
8 seeking to find it. See 6 Resnick and Sommer, *Collier on Bankruptcy*, ¶ 727.02[3][a] at  
9 727-16 – 727-17 (actual fraudulent intent is required to prove a claim under 11 U.S.C. §  
10 727(a)(2)). A debtor's failure to list valuable property on the bankruptcy schedules may  
11 be concealment for purposes of establishing a claim under § 727(a)(2). 6 Resnick and  
12 Sommer, *Collier on Bankruptcy*, ¶ 727.02[6][b] at 727-26 - 727-27, citing, *Peterson v.*  
13 *Scott*, 172 F.3d 959 (7<sup>th</sup> Cir. 1999) and *Butler v. Ingle (In re Ingle)*, 70 B.R. 979  
14 (Bankr.E.D.N.C. 1987); see also, *In re Beauchamp*, 236 B.R. at 730` (subsequent  
15 disclosure of asset omitted on schedules may not relieve the effect of the original  
16 concealment on the bankruptcy schedules for purposes of § 727(a)(2)).

17 Defendants contend that Plaintiff has not shown that they concealed the unpaid  
18 portion of the finder's fee by failing to disclose it on their bankruptcy schedules as an  
19 account receivable. *Defendant[s'] Proposed Finding[s] of Fact and Conclusions of Law*  
20 (*"Defendants' Proposed Findings"*) at 9. According to Defendants:

21 From January 2012 through March 2012 William Urso  
22 received installment payments on a referral (finder's fee) of  
23 \$8,000. Debtors deposited all the referral fees into the bank  
24 account of William Urso and Associates. Plaintiff failed to  
25 establish when the referral fee was earned and when the  
deposits were made. Nevertheless, any amounts received  
prior to the filing of the petition and not specifically identified  
as a referral fee were still included in the bank balance in item  
2 of Schedule B.

26 *Id.*

27 It is unclear in the record before the court what amounts were paid in January,  
28 which would have been pre-petition unless paid on the 31st, and in February and March.

1 At most, the court can conclude that some amount remained due, because Mr. Urso  
2 testified that payment was not completed until March 2012, and whatever this amount  
3 was became property of the bankruptcy estate upon filing Defendants' bankruptcy  
4 petition as an account receivable. However, Defendants did not list any amount as an  
5 account receivable, though they had such amount as an account receivable reportable as  
6 an asset on their bankruptcy schedules. Defendants' argument that Plaintiff failed to  
7 establish when the referral fee was earned is incorrect because as Defendant William  
8 Joseph Urso admitted during his deposition, the referral fee was earned in December  
9 2011. Defendants' argument that Plaintiff has failed to show when the deposits were  
10 made is also incorrect because Defendants admitted that the payments of the finder's fee  
11 was paid in installments between January 2012 and March 2012, meaning that at least  
12 some of the payments earned by Defendant William Joseph Urso was due on the petition  
13 date and paid after the petition date in January 2012. The parties did not specifically  
14 identify at trial how much of the \$8,000 finder's fee was received by Defendants  
15 prepetition or how much was received postpetition. The postpetition figure could have  
16 been nearer the \$8,000 mark, but there is no definitive corroborative evidence of this.  
17 However, Plaintiff's Exhibits 10 and 11, Bank Statements for the William Urso and  
18 Associates bank account for February 2012 showed deposits totaling \$6,300 into the  
19 account postpetition, and no explanation was provided by Defendants whether these  
20 deposits reflected prepetition or postpetition funds or whether they were finder's fee  
21 proceeds or not. *Id.*; *William Joseph Urso Trial Testimony*, November 14, 2013, at 11:33-  
22 11:39 a.m.

23 Defendants' argument that they deposited all the prepetition referral fees into the  
24 bank account of William Urso and Associates does not help them because if these  
25 payments were received postpetition (which might have included the February 2012  
26 postpetition bank deposits of \$6,150), they should have been turned over to the Chapter  
27 7 bankruptcy trustee as proceeds of prepetition accounts receivable, and they have made  
28 no showing that they so turned over these prepetition assets to the Chapter 7 trustee.

1 Thus, the court determines that Plaintiff has shown by a preponderance of the evidence  
2 that Defendant William Joseph Urso knew at the time that Schedule B to the bankruptcy  
3 petition was filed that he should have disclosed the remaining finder's fee he earned as  
4 an account receivable as a prepetition asset on Schedule B, and there is sufficient  
5 evidence that this failure to disclose was material.

6 2. Intent to Hinder, Delay, or Defraud Creditors

7 Defendants' awareness of the receivable and the duty to disclose it are also  
8 relevant to the court's determination of intent. Fraudulent intent for purposes of  
9 § 727(a)(2) can be shown through circumstantial evidence or inference drawn from a  
10 course of conduct. *Devers v. Bank of Sheridan, Montana (In re Devers)*, 759 F.2d 751,  
11 753-754 (9th Cir. 1985). However, there must be actual intent to hinder, delay, or  
12 defraud creditors and constructive intent is insufficient. *First Beverly Bank v. Adeeb (In re*  
13 *Adeeb)*, 787 F.2d 1339, 1342-1343 (9th Cir. 1986); *see also*, 6 Resnick and Sommer,  
14 *Collier on Bankruptcy*, ¶ 727.02[3][a] at 727-16 – 727-17. But denial of discharge need  
15 not rest on a finding of fraudulent intent, but proof of intent to hinder or delay creditors is  
16 sufficient. *Bernard v. Sheaffer (In re Bernard)*, 96 F.3d 1279, 1281 (9th Cir.1996)  
17 (citations omitted). The court further construes Section 727 liberally in favor of debtors in  
18 keeping with the Bankruptcy Code's ultimate goal of giving debtors a fresh start. *Id.*  
19 (citation omitted).

20 As discussed above, Plaintiff has shown that Defendant William Joseph Urso  
21 knew the accounts receivable amounts should have been disclosed on Schedule B at the  
22 time it was originally filed or amended. In his October 25, 2012 deposition, Mr. Urso  
23 answered questions regarding the finder's fee as a source of income around the time his  
24 bankruptcy petition was filed. *Plaintiff's Exhibit 26* at 14:2-15:7. A short time later he was  
25 asked if he had any accounts receivable at the time of the bankruptcy filing and, after  
26 clarifying that this meant "people owing me money," responded that he did not. *Id.* at  
27 30:15-19. Nevertheless, Mr. Urso admitted that the finder's fee was earned in December  
28 2011, that he received part of the fee in January 2012 and the rest through March 2012,

1 and thus, he knew that the remaining finder's fee should have been listed in his  
2 schedules. With such knowledge, the court determines that Defendant William Joseph  
3 Urso had the requisite intent to hinder, delay, or defraud creditors at the time the property  
4 was allegedly concealed. Bankruptcy debtors as Defendants have a duty to disclose  
5 assets on their bankruptcy schedules, and if they had any uncertainty as to whether  
6 assets were required to be listed on the schedules, they have a duty to disclose so the  
7 issue of disclosure may be resolved. *In re Ingle*, 70 B.R. at 983. Defendants offer no  
8 explanation for Mr. Urso with such knowledge why he failed to disclose the remaining  
9 unpaid accounts receivable on the bankruptcy schedules to vitiate the inference that the  
10 omission was intentional.<sup>2</sup> A reckless indifference to the truth is enough to show  
11 fraudulent intent for purposes of § 727(a)(2), and Plaintiff has shown that Defendant  
12 William Joseph Urso's knowledge of the accounts receivable in the form of the finder's  
13 fees not fully collected as of the petition date indicates that the lack of their disclosure on  
14 the bankruptcy schedules when the bankruptcy petition was filed was at least the result of  
15 reckless indifference to the truth, which indicates an intent to delay or hinder creditors, if  
16 not, defraud them. *In re Bernard*, 96 F.3d at 1281; *In re Ingle*, 70 B.R. at 983.

17 However, there is no evidence that Barbara Urso knew of the existence of the  
18 finder's fee at all. There is no evidence that she had any involvement in or awareness of  
19 her husband's business affairs. When asked about her husband's sources of income,  
20 Mrs. Urso responded: "He takes care of the bills. I don't get involved in that. I don't know."  
21 *Plaintiff's Exhibit 25, Transcript of Deposition of Barbara Urso*, at 37:13-16.

22  
23  
24 \_\_\_\_\_  
25 <sup>2</sup> Plaintiff implies that Defendants had a motive to conceal the accounts receivable because the funds were  
26 not exempt. *Plaintiff's Proposed Findings* at 8:23-26. Plaintiff argues that Defendants could not have  
27 exempted that amount because they used the exemption set under California Code of Civil Procedure, §  
28 704 *et seq.* *Id.* However, Plaintiff did not introduce any evidence regarding Defendants' claimed  
exemptions. Schedule C is not included in Plaintiff's exhibits or Request for Judicial Notice, and there is no  
other evidence regarding what exemptions Defendants were entitled to claim. Nevertheless, in light of the  
court's analysis, there is no need to resolve any issue regarding potential claims of exemption.

1 As to Defendant William Joseph Urso, there is sufficient evidence to show that he  
2 understood that the finder's fee was an account receivable or that it otherwise should  
3 have been disclosed at the time his Schedule B was filed.

4 Plaintiff has met his burden by showing through a preponderance of the evidence  
5 that Defendant William Joseph Urso concealed property of the bankruptcy estate, in the  
6 form of the unpaid portion of the finder's fee as an account receivable, when the  
7 bankruptcy petition was filed. Accordingly, the court grants his claim for denial of  
8 discharge under 11 U.S.C. § 727(a)(2)(B) as to Defendant William Joseph Urso.  
9 However, the court determines that Plaintiff has not met his burden of proving by a  
10 preponderance of the evidence that Defendant Barbara Urso concealed any property of  
11 the bankruptcy estate.

12 **C. 11 U.S.C. § 727(a)(4)(A)**

13 Plaintiff's third claim for relief alleges that Defendants' discharge should be denied  
14 under 11 U.S.C. § 727(a)(4)(A) because they made false oaths in their schedules,  
15 Certification of Employment Income, Statement of Financial Affairs, and in their testimony  
16 at their § 341(a) meeting of creditors. *Complaint* at 5:10-6:25, ¶¶ 15-17. In order to deny  
17 a debtor's discharge for a false oath or account under 11 U.S.C. § 727(a)(4)(A), a plaintiff  
18 must show that: (1) the debtor made a false oath in connection with the bankruptcy case;  
19 (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath  
20 was made fraudulently. *Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1197 (9th Cir.  
21 2010) (citations omitted).

22 Plaintiff contends that Defendants made false oaths by filing their schedules and  
23 Statement of Financial Affairs under the penalty of perjury and omitting the following: (1)  
24 personal and business bank accounts; (2) jewelry; (3) sports and hobby supplies; (4) a  
25 state court judgment of \$50,000; (5) a burial plot valued at \$8,000; (6) accounts  
26 receivable; (7) Defendants' interest in Urso Air Systems; (8) a 2001 Chevrolet Silverado  
27 1500; (9) Defendants' interest in two other businesses – American Builder's Inc. and  
28 William Urso and Associates; (10) Barbara Urso's income from Urso Air Systems; and



(11) William Joseph Urso's contracting income. *Plaintiff's Proposed Findings* at 10:27-11:24.

1. False Oath Related to Material Fact

The court considers the first two elements together in the interest of brevity and clarity because, while several of the alleged omissions can be determined to be false oaths, the court can also determine rather quickly that they are not related to material facts. A material omission from a Chapter 7 debtor's schedules can constitute a false oath. *In re Swenson*, 381 B.R. 272, 293 (Bankr. E.D. Cal. 2008). For example, where a debtor omits assets from his schedules and testifies that the schedule of property is true and correct this constitutes a false oath. *Id.* at 293-294.

A fact is material if it relates to the (1) debtor's business transactions, (2) the estate, or (3) the discovery of assets, business dealings, or existence or disposition of the debtor's property. *In re Retz*, 606 F.3d at 1198. An omission or misstatement is material if it detrimentally affects the administration of the estate. *Id.* However, discharge should not be denied under § 727(a)(4)(A) where there are minor errors or deviations in testimony or omitted assets have little or no value and their omission does not detrimentally affect administration of the estate. *Fogal Legware of Switzerland, Inc. v. Wills (In re Wills)*, 243 B.R. 58, 63 (9th Cir. BAP 1999).

a. Bank Accounts

Plaintiff asserts that Defendants failed to include their interests in several personal and business bank accounts as prepetition assets on their original Schedule B. *Plaintiff's Proposed Findings* at 3:24-27. On their most recent Schedule B, Defendants list seven bank accounts holding \$5,278.00 as of the petition date. *Request for Judicial Notice*<sup>3</sup> at 2:12; *Case No. 2:12-ap-01683-RK* at Docket Entry No. 44. Five of the

<sup>3</sup> Plaintiff filed a Request for Judicial Notice under Fed. R. Evid. 201 on October 19, 2013. See *Docket Entry No. 44*. The court may take judicial notice of a fact that is not subject to reasonable dispute because it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). This includes undisputed matters of public record. *Lee v. City of Los Angeles*, 250 F.3d 668, 689-690 (9th Cir. 2001). There is no evidence that Defendants dispute the facts set

1 accounts were maintained at U.S. Bank (\$3,596.00) and two appear to be held at Wells  
2 Fargo (\$932.00). *Id.* Defendants' original Schedule B listed a checking account at US  
3 Bank with a value of \$2,850.00 and a checking account at Wells Fargo with a value of  
4 \$1,300.00 (or total cash in bank accounts of \$4,150.00). *Plaintiff's Exhibit 1, Schedule B*  
5 *to Petition.*

6 While not broken out in the same detail as the amended Schedule B, Defendants'  
7 original schedule did identify the same two banks and the difference in the amounts held  
8 in the accounts was \$1,128.00. Plaintiff did not introduce any evidence of impact on  
9 administration of Defendants' bankruptcy estate caused by this inaccuracy, and has not  
10 introduced any evidence regarding whether these funds are exempt or not. The court  
11 determines that Defendants' failure to initially disclose an additional \$1,128.00 on their  
12 previously disclosed bank accounts on Schedule B was not material because the  
13 difference in amount is relatively small and they came forward to amend the schedule to  
14 disclose the relatively small additional amount. In the court's view, this is the type of  
15 minor error that does not justify denial of Defendants' discharge by itself absent evidence  
16 of some detrimental impact on administration of the bankruptcy estate.

17 b. Jewelry

18 Defendants listed jewelry with a value of "0" on their original Schedule B. *Plaintiff's*  
19 *Trial Exhibit 1.* Their most recent amended Schedule B discloses jewelry in the amount  
20 of \$1,714.00. *Request for Judicial Notice* at 2:12; *Case No. 2:12-ap-01683-RK* at Docket  
21 Entry No. 44. Defendants testified that they owned their wedding rings, a couple of  
22 watches, and other jewelry that had no significant value. *William Joseph Urso Trial*  
23 *Testimony*, November 14, 2013 at 11:44; *Barbara Urso Trial Testimony*, November 14,  
24 2013 at 9:51. Barbara Urso also testified at her deposition that they paid \$1,500 for their  
25 wedding rings in 1979 and her other jewelry was "costume jewelry." *Plaintiff's Exhibit 25*  
26 at 29:1-25. Plaintiff failed to introduce evidence demonstrating that Defendants' jewelry

27 \_\_\_\_\_  
28 forth in their September 19, 2013 Schedule B (for example, a subsequent amendment has not been filed)  
and the court can take judicial notice of this filing and the facts it contains.

1 is not exempt or that there has been any impact on administration of their estate caused  
2 by the initial undervaluing of that jewelry. The court finds that the initial undervaluing of  
3 Defendants' jewelry was not material, given the modest value of these items, based on  
4 the evidence presented at trial. Moreover, Defendants had amended their Schedule B to  
5 list their jewelry.

6 c. Sports & Hobby Supplies

7 Similarly, Defendants' original Schedule B disclosed sports and hobby supplies  
8 valued at \$0.00. *Plaintiff's Exhibit 1, Schedule B to Petition*. Defendants' most recent  
9 amended Schedule B lists sports and hobby supplies valued at \$1,050.00. *Request for*  
10 *Judicial Notice* at 2:12; *Case No. 2:12-ap-01683-RK* at Docket Entry No. 44. Plaintiff  
11 failed to introduce evidence demonstrating that Defendants' sports and hobby supplies  
12 are not exempt or that there has been any impact on administration of their estate caused  
13 by the initial undervaluing of that personal property. The court finds that the initial  
14 undervaluing of Defendants' sports and hobby supplies was not material based on the  
15 evidence presented at trial.

16 d. \$50,000 Judgment

17 Defendants concede that they answered affirmatively when the Chapter 7 trustee  
18 asked if their schedules were correct at their 11 U.S.C. § 341(a) meeting of creditors on  
19 April 10, 2012. *Pretrial Stipulation* at 4:17-19. A recording of Defendants' § 341(a)  
20 meeting of creditors was played at trial and confirms this. *§ 341(a) Recording Played*  
21 *during Trial November 14, 2013* at 9:32 a.m. Defendants' original Schedule B does not  
22 disclose an interest in a \$50,000 judgment in William Joseph Urso's favor or the  
23 unliquidated, contingent claim existing before the judgment was entered. *Plaintiffs'*  
24 *Exhibit 1, Schedule B to Petition*. Defendants' amended Schedule B, filed on April 17,  
25 2012, lists the judgment under item No. 21. *Plaintiff's Exhibit 8, Amended Schedule B*, at  
26 5. Although the claim is valued at \$0 due to its allegedly uncollectible status, the failure  
27 to disclose the judgment would necessarily impact the trustee's ability to investigate its  
28

1 collectability and value to the estate. The court finds that the failure to disclose the  
2 \$50,000 judgment was a false oath related to a material fact.

3 e. Burial Plot

4 Defendants' most recent amended Schedule B lists a burial plot valued at  
5 \$8,900.00. *Request for Judicial Notice* at 2:12; *Case No. 2:12-ap-01683-RK* at Docket  
6 Entry No. 44. This burial plot was not disclosed on their original Schedule B. *Plaintiff's*  
7 *Exhibit 1, Defendants' Filed Schedule B*. Defendants also provided evidence that they  
8 purchased the plot for \$8,175.00 in 2006. *Defendants' Exhibit 10, Defendants' Bank*  
9 *Account Statements for Account Number ending 0880*. Neither party introduced any  
10 evidence of the exempt status of the burial plot, but Defendants' failure to disclose it  
11 precluded the trustee from investigating its value or exempt status. The court finds that  
12 the failure to disclose the burial plot was a false oath related to a material fact.

13 f. American Builders, Inc. and William Urso and Associates

14 Plaintiff asserts that Defendants failed to disclose their interests in American  
15 Builders, Inc. and William Urso and Associates on their Statement of Financial Affairs.  
16 *Plaintiff's Proposed Findings* at 11:9-10. Defendants do not contest their ownership  
17 interests in these two companies. The two businesses were not disclosed on  
18 Defendants' original Statement of Financial Affairs under question 18, which requests  
19 information regarding businesses that Defendants were involved with within the six years  
20 prior to their petition date. *Plaintiff's Exhibit 2, Statement of Financial Affairs*.

21 Defendants testified that American Builders Inc. had its general contractor's  
22 license revoked, is no longer operational, and filed a closing tax return in 2011. *Trial*  
23 *Declaration of William Joseph Urso* at ¶ 5; *Trial Declaration of Barbara Urso* at ¶ 5.  
24 William Urso and Associates is also a sole proprietorship general contractor that ceased  
25 operating on October 28, 2011. *Plaintiff's Exhibit 9, Defendants' Amended Statement of*  
26 *Financial Affairs*. Both companies had their contractor's licenses revoked as of May 11,  
27 2012, after failing to provide a bond required as of December 27, 2011. *Plaintiff's Exhibits*  
28 *28 and 29, Proposed Decision and Order and Order Reimposing Revocation of Licenses*

1 *of American Builders, Inc., and William Urso & Associates and Urso Air Systems,*  
2 *Registrar of Contractors, Contractors' State License Board.* It therefore appears that  
3 these businesses had no value to the estate as of the petition date because they were no  
4 longer operating and there is no evidence that they held any assets that were not already  
5 disclosed in Defendants' schedules.

6 Further, it does not appear that the failure to list the business interests under  
7 question 18 prevented the trustee from investigating them. William Joseph Urso's self-  
8 employed status is disclosed under question 1 of the original Statement of Financial  
9 Affairs. *Plaintiff's Exhibit 2, Statement of Financial Affairs.* The administrative  
10 proceeding against American Builders Inc. is disclosed under question 3 and Defendants  
11 are both specifically identified as officers. *Id.* This appears sufficient to have put the  
12 trustee on notice of both Defendants' sole proprietorship and their corporation. It also  
13 appears to have had this effect because the trustee did in fact question Defendants  
14 regarding their business interests at the 11 U.S.C. § 341(a) meeting of creditors.  
15 *§ 341(a) Recording Played during Trial November 14, 2013 at 9:36 a.m.* An omission or  
16 misstatement is material if it detrimentally affects the administration of the estate. *In re*  
17 *Retz*, 606 F.3d at 1198. Plaintiff has not provided any evidence that these omitted  
18 business interests have impacted administration of Defendants' bankruptcy estate. The  
19 court concludes that Defendants' omission of American Builders, Inc. and William Urso  
20 and Associates from question 18 of their Statement of Financial Affairs was not a false  
21 oath related to a material fact.

22 g. Accounts Receivable

23 Debtor William Joseph Urso testified at trial and his deposition that he was owed  
24 \$8,000 as a finder's fee in December 2011, which was paid over January through March  
25 of 2012. *Plaintiff's Exhibit 26 at 14:2-24; William Joseph Urso Trial Testimony*, November  
26 14, 2013 at 11:30-11:33 a.m. The amount of the finder's fee that remained to be paid as  
27 of Defendants' petition date was not disclosed on Defendants' original Schedule B.  
28 *Plaintiff's Exhibit 1, Schedule B to Petition.* Because at least some of the payments were

1 due on or after the petition date, the payments should have been turned over to the  
2 trustee as proceeds of prepetition accounts receivable, and Defendants have made no  
3 showing that they so turned over the property to the trustee. Consequently, the  
4 bankruptcy trustee could not have gotten an honest understanding of the debtor's  
5 business dealings which then detrimentally affected the administration of the bankruptcy  
6 estate. The court's factual findings regarding this asset and the evidence presented at  
7 trial are discussed in more detail above under the court's discussion of § 727(a)(2)(B).  
8 These findings are sufficient to show by a preponderance of the evidence that : (1)  
9 Defendant William Joseph Urso made a false oath in connection with the bankruptcy  
10 case in his petition and bankruptcy schedules filed under penalty of perjury; (2) the oath  
11 related to a material fact of the omission of the then uncollected accounts receivable as  
12 prepetition assets on Schedule B; (3) the oath was made knowingly in light of Mr. Urso's  
13 knowledge that the accounts receivable were due and payable to Defendants as of the  
14 petition date; and (4) the oath was made fraudulently based on Mr. Urso's reckless  
15 indifference to the truth in light of his knowledge of the accounts receivable and lack of  
16 explanation why they were not listed as an asset on the schedules. *In re Retz*, 606 F.3d  
17 at 1197.

18 Based on this evidence presented at trial, the court determines that Defendant  
19 William Joseph Urso made a false oath related to a material fact in omitting this asset  
20 from Schedule B to establish Plaintiff's claim under § 727(a)(4), but that the evidence is  
21 insufficient to show that Defendant Barbara Urso made a false oath related to a material  
22 fact in omitting this asset from Schedule B.

23 h. Urso Air Systems

24 Plaintiff contends that Defendants made a false oath because they did not disclose  
25 their interest in Urso Air Systems on their Schedule B. *Plaintiff's Proposed Findings* at  
26 11:5. As discussed in greater detail under the court's factual findings regarding Urso Air  
27 Systems above, the court finds that Defendants did not actually own an interest in the  
28 business at any time. Therefore, the court concludes that they could not have made a

1 false oath by failing to include the business on the Schedule B listing of personal property  
2 assets.

3 i. 2001 Chevrolet Silverado 1500

4 Defendants insured a 2001 Chevrolet Silverado C1500 that was not listed on their  
5 Schedule B. *Barbara Urso Trial Testimony*, November 14, 2013 at 11:15 a.m.; *Plaintiff's*  
6 *Exhibit 19, Defendants' Automobile Insurance Statement for period 8/20/11 to 8/20/12*.  
7 Plaintiff contends that this constituted a false oath because the vehicle was listed on the  
8 depreciation schedule for American Builders, Inc. *Plaintiff's Proposed Findings* at 11:5-8.  
9 However, Plaintiff failed to seek relief piercing the corporate veil or provide any evidence  
10 that would justify the court in disregarding the corporate form. Plaintiff's evidence merely  
11 indicates that Defendants' corporation owned this asset, and the court finds that the  
12 failure to list it on Schedule B in Defendants' listing of their own assets is not a false oath.

13 j. Barbara Urso's Income from Urso Air Systems

14 Plaintiff contends that Defendants made a false oath because they did not disclose  
15 Mrs. Urso's income from Urso Air Systems on their Schedule I. *Plaintiff's Proposed*  
16 *Findings* at 11:14. As discussed in greater detail under the court's factual conclusions  
17 above, the court finds that Barbara Urso was not an employee of Urso Air Systems and  
18 did not earn income from Urso Air Systems at the time her bankruptcy petition was filed.  
19 Therefore, the court concludes that Defendants could not have made a false oath by  
20 failing to include such income on their Schedule I.

21 k. William Joseph Urso's Contracting Income

22 Plaintiff contends that Defendant William Joseph Urso's income reflected on his  
23 Schedule I and Chapter 7 Statement of Current Monthly Income and Means Test  
24 Calculation was incorrect because deposits were made into the bank accounts of  
25 American Builders Inc. and William Urso and Associates. *Plaintiff's Proposed Findings* at  
26 5:27-6:17. However, Plaintiff failed to provide sufficient evidence to demonstrate that the  
27 income Defendant actually received as distributions from these business accounts was  
28 higher than that reported on Schedule I and the Means Test. Plaintiff merely showed that

1 Defendants' business received gross amounts without providing evidence of what  
2 amounts were spent on business expenses and what net amounts were distributed to  
3 Defendants personally. *William Joseph Urso Trial Testimony*, November 14, 2013 at  
4 11:37 a.m. The court finds that Plaintiff has failed to meet his burden of proof by a  
5 preponderance of the evidence to establish that Defendant William Joseph Urso's income  
6 was misstated on either Schedule I or Defendants' Means Test.

7 I. Conclusion

8 The court has identified the following false oaths made in Defendants' initial  
9 bankruptcy schedules: (1) failure to disclose the \$50,000 judgment; (2) omission of the  
10 burial plot; and (3) omission of the finder's fee as an account receivable. However, in  
11 order to prevail Plaintiff must also prove that these false oaths were related to a material  
12 fact and made knowingly and fraudulently, which is discussed below.

13 2. Knowingly

14 A debtor acts knowingly if they act deliberately and consciously. *In re Retz*, 606  
15 F.3d at 1198. Defendants concede that they answered affirmatively when the Chapter 7  
16 trustee asked if their schedules were correct at their § 341(a) meeting of creditors on  
17 April 10, 2012. *Pretrial Stipulation* at 4:17-19. A recording of Defendants' 11 U.S.C. §  
18 341(a) meeting of creditors was played at trial and confirms this. *§341(a) Recording*  
19 *Played during Trial November 14, 2013* at 9:32 a.m. However, Defendants raised the  
20 issue of an omitted asset, a cemetery plot, immediately after doing so. *Id.* Defendants  
21 also raised the issue of a judgment in William Joseph Urso's favor that he had learned  
22 about post-petition. *Id.* at 9:34 a.m.

23 Defendants' raising the issue of the omitted burial plot at the first opportunity with  
24 the trustee, without any evidence to the contrary, indicates that they did not knowingly fail  
25 to schedule the asset. Defendants would not consciously and deliberately fail to  
26 schedule the asset only to bring it to the trustee's attention before he investigated.  
27 Defendant William Joseph Urso also testified that he did not learn of the \$50,000  
28 judgment until after the petition was filed and did not have any of the paperwork



1 concerning that lawsuit, of which he was one of a number of plaintiffs. § 341(a)  
2 *Recording Played during Trial November 14, 2013* at 9:34 a.m. It appears that Mr. Urso  
3 was a minor player in a larger controversy and was not aware of the litigation or  
4 developments in it. This is supported by his lack of specific knowledge at the 11 U.S.C. §  
5 341(a) meeting of creditors. Plaintiff does not provide any evidence to the contrary, such  
6 as documents indicating Mr. Urso's involvement. And, as with the burial plot, Defendants  
7 brought this omitted asset to the trustee's attention at their first opportunity. It is therefore  
8 difficult to conclude that Defendants had knowingly omitted the judgment. The court finds  
9 that Plaintiff has failed to meet his burden to prove by a preponderance of the evidence  
10 that Defendants knowingly omitted the \$50,000 judgment or burial plot. However, as  
11 discussed herein, Plaintiff has shown by a preponderance of the evidence that Defendant  
12 William Joseph Urso knowingly omitted the unpaid portion of the finder's fee as an  
13 account receivable.

14 3. Fraudulently

15 Finally, Defendants' discharge can only be denied under § 727(a)(4)(A) if their  
16 omission of the \$50,000 judgment or burial plot was fraudulent. Fraudulent intent is  
17 demonstrated by showing that a debtor made a false oath or omission, which he knew  
18 was false at the time, with the intent and purpose of deceiving creditors. *In re Retz*, 606  
19 F.3d at 1198-1199. "Reckless indifference or disregard for the truth may be  
20 circumstantial evidence of intent, but is not sufficient, alone, to constitute fraudulent  
21 intent." *Id.* at 1199. Fraudulent intent may be supported by certain "badges of fraud":

22 These factors, not all of which need be present, include (1) a  
23 close relationship between the transferor and the transferee;  
24 (2) that the transfer was in anticipation of a pending suit; (3)  
25 that the transferor Debtor was insolvent or in poor financial  
26 condition at the time; (4) that all or substantially all of the  
27 Debtor's property was transferred; (5) that the transfer so  
completely depleted the Debtor's assets that the creditor has  
been hindered or delayed in recovering any part of the  
judgment; and (6) that the Debtor received inadequate  
consideration for the transfer.

28 *Id.* at 1200.

1  
2 There was no evidence provided at trial of any intent to hinder, delay, or defraud  
3 creditors by initially omitting the \$50,000 judgment or burial plot. Defendants promptly  
4 disclosed these assets to the trustee at their initial meeting of creditors, and Plaintiff did  
5 not provide any evidence that they have non-exempt value that might motivate  
6 Defendants to hide the assets. The court finds that Plaintiff has not met his burden of  
7 proof to demonstrate by a preponderance of the evidence that Defendants actually  
8 intended to hide the \$50,000 judgment or burial plot from their creditors or the trustee.  
9 However, as discussed herein, Plaintiff has shown by a preponderance of the evidence  
10 that Defendant William Joseph Urso knowingly omitted the unpaid portion of the finder's  
11 fee as an account receivable, and the circumstances indicate an intent to deceive  
12 because he knew that the finder's fee was earned prepetition, deposited the funds into  
13 his bank account and did not show that he turned over any of the funds received  
14 postpetition to the bankruptcy trustee. Therefore, the court grants Plaintiff's claim for  
15 relief for denial of discharge pursuant to 11 U.S.C. § 727(a)(4)(A) as to Defendant William  
16 Joseph Urso, but denies the claim as to Defendant Barbara Urso.

17 **D. 11 U.S.C. § 727(a)(4)(D)**

18 Plaintiff's fourth claim for relief alleges that Defendants' discharge should be  
19 denied under 11 U.S.C. § 727(a)(4)(D) because they prevented the Chapter 7 trustee  
20 from gaining sufficient information to know that he should have requested books and  
21 records from Defendants. *Complaint* at 6:27-7:11, ¶¶ 18-20. In order to prevail under  
22 §727(a)(4)(D), Plaintiff must establish that Defendants knowingly and fraudulently  
23 withheld recorded information related to their financial affairs from an officer of the estate.  
24 11 U.S.C. § 727(a)(4)(D).

25 Plaintiff appears to have abandoned his claim under § 727(a)(4)(D) because he  
26 did not include any conclusions of law under this subsection in his Plaintiff's Proposed  
27 Findings and does not propose any findings of fact that would seem to support this claim.  
28 Regardless, the court finds that Plaintiff has not presented sufficient evidence to support

1 such a claim. In order to prevail under § 727(a)(4)(D), a plaintiff must identify specific  
2 documents that were requested and not delivered. *Turner v. Moeritz (In re Moeritz)*, 317  
3 B.R. 177, 185-186 (Bankr. M.D. Fla. 2004). There can be no knowing and fraudulent  
4 withholding if documents were never requested and there must be evidence of specific  
5 document requests made by an officer of the bankruptcy estate, such as the bankruptcy  
6 trustee. *Eastern Diversified Distributors, Inc. v. Matus (In re Matus)*, 303 B.R. 660, 679-  
7 680 (Bankr. N.D. Ga. 2004). In order to establish that a debtor has failed to turn over  
8 records, a plaintiff must also introduce evidence that the records existed as of the date of  
9 the bankruptcy and were in the debtor's possession. *Solis v. Asif (In re Asif)*, 455 B.R.  
10 768, 793 (Bankr. D. Kan. 2011).

11 Plaintiff failed to identify any specific records that were both requested by the  
12 trustee and existed at the time they were requested, and so he has failed to meet his  
13 burden of proof by a preponderance of the evidence. The court therefore denies  
14 Plaintiff's claim for relief for denial of Defendants' discharge pursuant to 11 U.S.C. §  
15 727(a)(4)(D).

16 **E. 11 U.S.C. § 727(a)(5)**

17 Plaintiff's fifth and final claim for relief alleges that Defendants' discharge should  
18 be denied under 11 U.S.C. § 727(a)(5) because they understated and hid their income  
19 from creditors. *Complaint* at 7:12-23, ¶¶ 21-23. Section 727(a)(5) provides for denial of  
20 discharge where "the debtor has failed to explain satisfactorily, before determination of  
21 denial of discharge under this paragraph, any loss of assets or deficiency of assets to  
22 meet the debtor's liabilities." 11 U.S.C. § 727(a)(5). In order to prevail under § 727(a)(5),  
23 a plaintiff must prove that (1) the debtor owned identifiable assets at a time not too  
24 remote from the petition date, (2) the debtor no longer owned the assets on the petition  
25 date, and (3) the bankruptcy pleadings do not reflect an adequate explanation for  
26 disposition of the assets. *In re Retz* at 1205. "Whether a debtor has satisfactorily  
27 explained a loss of assets is a question of fact for the bankruptcy court." *Id.*

1 Plaintiff contends that Defendants engaged in a pattern of omitting business  
2 interests and income and provided false and inconsistent explanations of their financial  
3 affairs. *Plaintiff's Proposed Findings* at 14:18-24. However, he does not identify a single  
4 asset that was disposed of prepetition. *Id.* Rather, he alleges that Defendants concealed  
5 assets that they continue to possess. *Id.* Plaintiff has failed to provide evidence of any  
6 asset that was lost or disposed of, with or without adequate explanation, and the  
7 evidence at trial is insufficient to support denial of Defendants' discharge under this claim.  
8 Accordingly, the court denies Plaintiff's claim for relief for denial of Defendants' discharge  
9 pursuant to 11 U.S.C. § 727(a)(5).

10 **F. Conclusion**

11 This memorandum decision constitutes the court's findings of fact and conclusions  
12 of law. The court awards judgment in favor of Plaintiff as to his claims against Defendant  
13 William Joseph Urso under 11 U.S.C. § 727(a)(2)(B) and (4) and denies the remaining of  
14 Plaintiff's claims for relief.

15 Counsel for Plaintiff is to lodge a proposed judgment consistent with this  
16 memorandum decision within 30 days of entry of this order.

17 IT IS SO ORDERED

18 ###

19  
20  
21  
22  
23  
24 Date: July 28, 2014



Robert Kwan  
United States Bankruptcy Judge